



COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

FIFTH SECTION

CASE OF BORSHCHEVSKAYA v. UKRAINE

(Application no. 9962/05)

JUDGMENT

STRASBOURG

25 October 2007

FINAL

25/01/2008

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Borshchevskaya v. Ukraine,

The European Court of Human Rights (Fifth Section), sitting as a Chamber composed of:

Mr P. LORENZEN, *President*,
Mrs S. BOTOCHAROVA,
Mr K. JUNGWIERT,
Mr V. BUTKEVYCH,
Mrs M. TSATSA-NIKOLOVSKA,
Mrs R. JAEGER,
Mr M. VILLIGER, *judges*,

and Mrs C. WESTERDIEK, *Section Registrar*,

Having deliberated in private on 2 October 2007,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 9962/05) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Ukrainian national, Ms Svetlana Semyonovna Borshchevskaya (“the applicant”), on 23 February 2005.

2. The Ukrainian Government (“the Government”) were represented by their Agent, Mr Y. Zaytsev.

3. On 2 November 2005 the Court decided to give notice of the application to the Government. Applying Article 29 § 3 of the Convention, it decided to rule on the admissibility and merits of the application at the same time.

THE FACTS**THE CIRCUMSTANCES OF THE CASE**

4. The applicant was born in 1956 and lives in Novomoskovsk. In the early nineties the applicant worked in Russia, however, since 1992 she had a Ukrainian citizenship stamp in her U.S.S.R. passport, which she exchanged for a Ukrainian passport in 1999.

5. In 1995 the applicant left Russia, moved into her Novomoskovsk house purchased in 1987, and sought to privatize an adjacent plot of land. In September 1996, having received a privatization certificate, she found out that part of the plot she considered to be entitled to, had been privatized by her neighbour, Mrs N.P.

6. On 10 February 1997 the applicant instituted civil proceedings against Mrs N.P., seeking partial annulment of her privatization documents.

7. On 19 March 1998 the Novomoskovsk Court (*Новомосковський міський суд Дніпропетровської області*) dismissed her claims as lodged outside the applicable statute of limitation. The applicant appealed.

8. On 23 April 1998 the Dnipropetrovsk Regional Court ("the Regional Court"; *Дніпропетровський обласний суд*)¹ quashed this judgment and remitted the case for a fresh consideration. It found that the Novomoskovsk Court had insufficiently analysed the circumstances concerning the application of the statute of limitation. It further instructed the court to examine particular documentary and other evidence and to summon the City Council's Executive Committee (*Виконавчий комітет Новомосковської міської ради*), which had issued the privatization documents.

9. In October 1998 Mrs N.P. lodged a counter-claim, seeking to annul the applicant's privatization certificate. She maintained that the applicant had not received Ukrainian citizenship until 1999 and so, under the applicable law, had not been entitled to privatize land before that time.

10. On 18 January 2001 the Novomoskovsk Court accepted Mrs N.P.'s argument, having dismissed all of the applicant's claims and having allowed all those of Mrs N.P. The applicant appealed.

11. On 5 March 2001 the Regional Court quashed this judgment. It found that the Novomoskovsk Court had misinterpreted applicable substantive law and breached a number of procedural requirements. Particularly, it had failed to examine a number of relevant documents and witnesses, as well as to substantiate the dismissal of the applicant's claims against Mrs N.P.

12. On 4 January and 12 November 2003 the applicant amended her claims.

13. On 15 July 2004 the Novomoskovsk Court partly allowed both parties' claims. In particular, it ordered the Executive Committee to change the planning scheme and record each party's ownership over the land, which she actually used. The applicant appealed.

14. On 9 December 2004 the Regional Court quashed this judgment, having found that the Novomoskovsk Court had exceeded its procedural authority in deciding to design a planning scheme, which power was vested in the municipal authorities. Furthermore, the court still had failed to

1. Since July 2001 – the Dnipropetrovsk Regional Court of Appeal (*Апеляційний суд Дніпропетровської області*).

examine certain of the documents of relevance to the proceedings. The applicant appealed in cassation.

15. As of June 2006 the proceedings were pending before the cassation court.

16. In the course of the proceedings, the first-instance court scheduled some 33 hearings. Most of them were scheduled with intervals ranging from several weeks to five months. On two occasions the intervals between the hearings exceeded six and nine months respectively (28 January 1999 – 12 August 1999 and 3 April 2002 – 21 January 2003). Thirteen hearings were adjourned on account of the absences of municipal authorities summoned into the proceedings. Twice the hearings were adjourned on account of the applicant's failure to appear.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

17. The applicant complained that the length of the proceedings had been incompatible with the “reasonable time” requirement, laid down in Article 6 § 1 of the Convention, which reads as follows:

“In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal...”

18. The Government contested that argument.

19. The proceedings started in February 1997. However, the period to be taken into consideration began only on 11 September 1997, when the recognition by Ukraine of the right of individual petition took effect. Nevertheless, in assessing the reasonableness of the time that elapsed after that date, account must be taken of the state of proceedings at the time. On 9 June 2006 the period in question had not yet ended. It had already lasted on that date eight years and nine months, during which period the merits of the applicant's claims had been considered by two levels of jurisdiction.

A. Admissibility

20. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

21. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities and what was at stake for the applicant in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

22. The Court finds that the complexity of the case and the applicant's conduct alone cannot explain the overall length of the proceedings and finds that a number of delays (remittals of the case for a fresh consideration, two prolonged periods between scheduling the hearings and failures of the municipal authorities to appear) are attributable to the Government.

23. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present case (see e.g., *Frydlender*, cited above; *Svetlana Naumenko v. Ukraine*, no. 41984/98, 9 November 2004 and *Karnaushenko v. Ukraine*, no. 23853/02, 30 November 2006).

24. Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. Having regard to its case-law on the subject, the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the "reasonable time" requirement.

25. There has accordingly been a breach of Article 6 § 1.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

26. The applicant further complained that she had no effective remedies for her complaint concerning the excessive length of the proceedings. She relied on Article 13 of the Convention.

27. The Government considered that Article 13 was not applicable to the circumstances of the case as the applicant had not made out an arguable claim under Article 6 § 1.

28. The Court refers to its findings in paragraphs 20 and 25 above and notes that this complaint is linked to the applicant's complaint under Article 6 § 1. It finds that this complaint must likewise be declared admissible.

29. The Court reiterates that Article 13 guarantees an effective remedy before a national authority for an alleged breach of the requirement under Article 6 § 1 to hear a case within a reasonable time (see *Kudla v. Poland* [GC], no. 30210/96, § 156, ECHR 2000-XI). The Government did not name any such remedy available to the applicant.

30. The Court considers that in the present case there has been a violation of Article 13 of the Convention on account of the lack of a remedy under domestic law whereby the applicant could have obtained a ruling upholding her right to have her case heard within a reasonable time, as set forth in Article 6 § 1 of the Convention (see *Efimenko v. Ukraine*, no. 55870/00, § 64, 18 July 2006).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

31. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Damage, costs and expenses

32. The applicant claimed 10,000 euros (EUR) in non-pecuniary damage. She further claimed 508 hryvnyas (EUR 75) in respect of pecuniary damage, out of which EUR 20 represented expenses, justified by receipts, incurred in connection with her application to the Court (printing, copying services and correspondence expenses).

33. The Government contested these claims.

34. The Court considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards her EUR 2,800 under that head. The Court further finds it reasonable to award the applicant EUR 20 for expenses incurred in connection with her Convention proceedings. As to the remainder of the amount claimed in respect of pecuniary damage, the Court does not discern any causal link between this amount and the violation found; it therefore rejects this claim.

B. Default interest

35. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

3. *Holds* that there has been a violation of Article 13 of the Convention;
4. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 2,820 (two thousand eight hundred and twenty euros) in respect of non-pecuniary damage and costs and expenses, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 25 October 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK
Registrar

Peer LORENZEN
President